

SECTION 5 - SPECIAL REGULATIONS

5.1 General

Procedures Requiring Site Plans - Applicants for Special Permits for uses so designated in Section 3.2 shall submit ten (10) copies of an application and a site plan to the special permit granting authority. Applicants for multi-family and flexible development are encouraged to pursue Pre-Application Review prior to the formal application stage, which requires detailed plans.

5.2 Multi-Family Dwellings

5.2.1 Procedures:

5.2.1.1 Application and Plans: Applicants for a Special Permit for Multi-Family Dwellings shall submit applications and plans as required by Section 5.1.

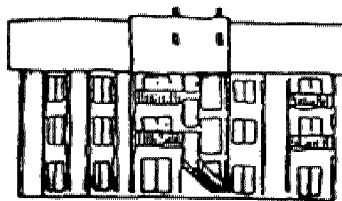
5.2.1.2 Review and Reports: The special permit granting authority shall transmit one copy of the application and required plans to the Board of Health, who shall submit a report consistent with Section 1.5.5.

5.2.1.3 Criteria: Approval of multi-family dwellings in the R-MF zoned areas shall be granted upon special permit granting authority determination that the plan complies with the requirements of this By-Law and that due regard has been given to the disposal of surface waters, movements of vehicular traffic and accessibility to emergency vehicles and that the use is in harmony with the general purpose and intent of this By-Law. All multi-family structures must be connected to public water and sewer systems. On-site treatment and disposal of sewerage is not permitted. A public water system may be any municipal water supplier or a public utility franchised to furnish water.

5.2.2 Requirements

5.2.2.1 There shall be at least 5500 sq. ft. of land area for each dwelling unit proposed to be placed on a lot. Each building shall not exceed 140 feet in any dimension.

5.2.2.2 The site plan shall be so designed that parking areas are screened from streets by building location, grading, or screening; lighting on parking areas avoids glare on adjoining properties; major topographic changes or removal of existing trees are avoided whenever possible; and water, wetlands, or other scenic views from streets are preserved.



MULTIFAMILY DWELLING

(for illustration purposes only)

5.2.2.3 Not less than 25 percent of the lot area of multi-family dwellings only in the R-MF district shall be retained as unoccupied space free of all buildings, parking and pavement including street access drives and walks or other conditions rendering the land surface impervious. Within the Water Supply Protection Overlay District not more than 25 percent of the lot area shall be rendered impervious; the remainder shall be retained as unoccupied space free of all buildings, parking, pavement other than street access drives and walks, and other conditions rendering the land surface impervious; except that the Inspector of Buildings may, after consultation with the Town Engineer, and the Conservation Commission, allow up to 75 percent of the lot area to be rendered impervious, provided that techniques satisfying the requirements specified in Section 7.5 subsection (d) are used to maximize groundwater recharge without risking groundwater contamination. These unpaved areas shall have appropriate landscaping of grass, shrubbery, trees, flowers, or suitable ground cover indigenous to the area. Adjacent to, and for the length of each exterior wall of each principal building, there shall be a three (3) foot wide area of landscaping. Adjacent to, and for the length of each side and rear lot line, there shall be a fifteen (15) foot wide area of landscaping. All such landscaping shall be indicated on the Site Plan required in Section 5.1.

5.2.2.4 Within the unoccupied space requirement of Section 5.2.2-3 above, there shall be one thousand (1000) square feet of usable common open space per dwelling unit. Usable common open space shall mean areas left substantially in a natural state or improved by such landscaping as required in Section 5.2.2.3. above, and primarily designed and intended for the active and passive recreation of the occupants of the dwellings. Usable common open space shall not include street rights-of-way, open parking, or service areas, driveways, easements for above ground utilities, required minimum front yards, or any other land deemed unsuitable by the Planning Board for reasons of excessive slope or poor drainage.

5.2.2.5 In cases of public open space dedicated in fee to the Town, such open space shall be maintained as a public area, accessible to the public. This shall not preclude the Town from refusing to accept such land with or without a favorable report from the special permit granting authority.

5.2.2.6 In cases of the sale of individual units as in a condominium, there shall be included in the deed a requirement obligating the purchasers to join in an organization of unit owners incorporated under G.L. c. 183A, as amended. The organization shall file a written report, including the names and addresses of all officers of the organization, with the Town Clerk, to be submitted to the Town Clerk by February 15 of each year. Such report may be the same written report rendered to all unit owners referred to in G.L. c. 183A, §10(d).

5.2.2.7 There shall be a satisfactory design and location of collection points for the disposal of garbage and trash, adequately screened for reason of health and safety, as determined by the special permit granting authority and the Board of Health.

5.2.2.8 All existing or proposed utilities shall be installed underground at the time of initial construction. Lighting facilities, whether placed along service drives, in parking areas, or on the exterior of buildings, shall be so arranged that they do not cause illumination in excess of one-half (1/2) of a foot candle at any point vertically above the property line or upon any window surface of buildings used for dwelling purposes.

5.2.2.9 If there is more than one (1) such structure on a lot of record, there shall be at least thirty (30) feet between each structure. The only exception may be that no more than three (3) buildings may each be inter-connected by a covered walkway or breezeway for reasons of convenience and shelter from the elements, if such walkway shall not, in the opinion of the special permit granting authority, impair the services to the buildings by emergency vehicles or equipment. Such buildings so inter-connected shall be deemed as separate and individual buildings for the purposes of administering the Rules and Regulations Governing the subdivision of Land for the Town of Grafton.

5.2.2.10 The construction of drainage, utilities and roadways shall be performed in accordance with the design and construction standards of the Rules and Regulations Governing the Subdivision of Land in the Town of Grafton. The special permit granting authority shall have the right to waive any of such special requirements.

5.3 Major Residential Development

5.3.0 General

Major Residential Development shall be permitted in the residential districts (R-20, R-40, Agricultural, RMF) only upon issuance of a Special Permit from the Planning Board, as specified in Sections 1.3.3, 1.5 and 3.2.3.1 of this By-Law, and in accordance with the additional requirements specified herein.

5.3.1 Definition

Flexible Development as set forth in this Section is authorized by The Zoning Act, General Laws c. 40A, Section 9, and is based on the general concept of "Cluster Development" described therein. A Flexible Development shall mean a Major Residential Development in which the single family dwelling units are clustered together into one or more groups on the lot and the clusters are separated from each other and adjacent properties by permanently protected open space.

5.3.2 Purpose

Major Residential Developments shall be designed to:

- a) allow for greater flexibility and creativity in the design of residential developments;
- b) encourage the permanent preservation of open space, agricultural and forestry land, and other natural resources;
- c) maintain the Town of Grafton's traditional New England rural character and land use pattern in which small villages contrast with open space and farmlands;
- d) protect scenic vistas from Grafton's roadways and other places;
- e) preserve unique and significant natural, historical and archeological resources;

-
- f) facilitate the construction and maintenance of streets, utilities and public services in a more economical and efficient manner;
 - g) protect existing and potential municipal water supplies;
 - h) encourage a less sprawling form of development;
 - i) minimize the total amount of disturbance on the site.
- (TM 10-18-99)

5.3.3 Applicability:

- a) In order to further the purposes enumerated above, Major Residential Development shall only be allowed after issuance of a Flexible Development Special Permit, hereinafter referred to as "FDSP", or a special permit for Major Residential Development utilizing Conventional Development, hereinafter known as "CDSP", by the Planning Board. (T.M. 3-16-87, 10-18-99)
- b) At the owner's option, an application can be made for a FDSP for a Minor Residential Development. (TM 10-18-99)

5.3.4 Data Submission - Requirements for All Major Residential Developments:

- a) **Pre-Application Review:** To promote better communication and to avoid misunderstanding the applicant is encouraged to meet with the Planning Board prior to filing its Application for a special permit for a Major or Minor Residential Development.
- b) Applicants for Major Residential Special Permits shall file with the Town Clerk one (1) copy, and with the Planning Board twelve (12) copies (unless a lesser number of copies is allowed by specific vote of the Planning Board), of the following documents which shall have been prepared by an interdisciplinary team including a registered land surveyor, a registered professional engineer, and a registered landscape architect:
 - 1. A Conventional Development Plan conforming to the requirements of a preliminary subdivision plan under the Subdivision Rules showing a conventional lot layout. Such plan shall also indicate wetlands, proposed topography and, except where Town sewers will be utilized, the results of deep soil test pits and percolation tests (the location of which may be designated by the Board of Health or its agent) at a rate of one per every five acres or more as may be required by the Board of Health, but in no case fewer than five per Major Residential Development.
 - 2. A Flexible Development Plan in the same detail as the Conventional Development Plan but showing development of the lots so as to maximize the purposes of Flexible Development.
 - 3. A Land Use Plan, as required under Section 5.3.11.a, showing the proposed use of the Common Land.

-
4. A brief comparison of the impacts of a Flexible Development Plan to those that would result from the Conventional Development Plan, or if the application is for a CDSP, the analysis should discuss the specific site characteristics which make the Conventional Development Plan the best development option, including but not limited to the purpose and design guidelines for Flexible Development.
 5. A list of requested waivers from the Subdivision Rules.

5.3.5 Major Residential Development Standards

The following standards shall apply to all Major Residential Developments:

5.3.5.1 Number of Dwelling Units Permitted: The maximum number of dwelling units allowed shall equal the number of dwelling units which could reasonable be expected to be developed on the property under a Conventional Development Plan in full conformance with zoning, Subdivision Rules, health codes, wetlands bylaws, and other applicable requirements.

5.3.5.1.1 Where the property lies in more than one zoning district, the number of dwelling units allowed shall be calculated as above for each district and added to give an overall allowable total.

5.3.5.1.2 The Planning Board shall consider the recommendations of the Board of Health, the Conservation Commission, and the Engineering Department of the Town of Grafton in making determinations hereunder.

5.3.5.2 Bonus Provision: The Planning Board shall issue a FDSP containing more than the number of dwelling units permitted under Section 5.3.5.1 above, upon the Board's determination that the proposed development, through the quality of its site selection, programming and design, displays a conscious effort to comply with the purposes of Flexible Development. The increase over the number of dwelling units permitted under Section 5.3.5.1 shall be: (a) 15% of the total permitted under that section if the proposed development complies with at least 6 of the Design Guidelines specified in Section 5.3.13; (b) 20% of the total permitted under that section if the proposed development complies with at least 9 of the Design Guidelines; and (c) 25% if the proposed development complies with all Design Guidelines. Any Design Guideline that is not applicable to the site shall not be counted in determining the bonus.

5.3.6 Minimum Dimensional Requirements for Lots within a Flexible Development

- a) **Average Lot Area:** In the R-20 District not less than 10,000 square feet; in the R-40 District not less than 20,000 square feet (with public sewer and water, 15,000 square feet); and in the Agricultural District not less than 30,000 square feet (with public sewer and water, 25,000 square feet).

-
- b) **Minimum Lot Area:** The minimum lot area for all building lots in a Flexible Development in the R-20 District shall not be less than 8,000 square feet; in the R-40 District not less than 12,500 square feet and in the Agricultural District not less than 20,000 square feet.
 - c) **Minimum Frontage:** Not less than 80 feet. Lots located on the turnaround of a dead-end street shall have a minimum of fifty (50) feet of street frontage providing a front building line is designated on the Plan for such a lot and the width of the lot at this building line is at least equal to the minimum frontage requirement.
 - d) **Front Yard Setbacks:** Front Yards may be staggered to provide a variety in the size of such yards. The minimum average of all front yards shall be twenty (20) feet; however, no front yard shall be less than fifteen (15) feet. The front yard setback shall be measured from the nearest edge of pavement or sidewalk as appropriate.
 - e) **Side Yard Setbacks:** Side Yards shall be a minimum of seven (7) feet.
 - f) **Rear Yard Setbacks:** Rear Yards shall be a minimum of fifteen (15) feet, except that in no case may a rear yard setback line be within 50 feet of any property that is not part of the flexible development.
 - g) The front, side and rear setback lines shall be shown on the Definitive Subdivision and or Approval Not Required plan.
 - h) **Buffer Areas:** All dwellings and structures shall be located a minimum of 50 feet from adjacent tracts of land and adjacent or on site farmland.
 - i) The portions of the buffer strip between the residential and farmland portions of a Flexible Development may be counted as usable Common Land for Flexible Development purposes, provided such use will not impact adversely on adjacent farming activity and is consistent with Section 5.3.2 of the By-Law.
 - j) **Accessory Buildings or Uses:** Accessory buildings or uses are not allowed in front yards. Accessory buildings and uses such as storage sheds and swimming pools may be located within the rear setback. No accessory building or use may be located within ten (10) feet of the rear lot line.

5.3.7 Required Amount of Common Land

Not less than 40% in the R-20 District, 40% in the R-40 District, and 50% in the Agricultural District of the total area of the tract of land to be developed as a Flexible Development shall be dedicated as Common Land. The following additional restrictions shall apply:

- a) At least 50% of the required amount of Common Land shall be Upland and shall be dedicated and used for a purpose listed in 5.3.11.
- b) Up to 50% of the required Common Land may be composed of land classified as bordering vegetated and isolated wetlands, as defined by General Laws c. 131, §40,

or the Town of Grafton Wetlands By-Law, or areas designated for stormwater management, provided that the proposed uses of this Common Land are found to be consistent with Section 5.3.11.

- c) Rights of Way for streets or common drives, and the perimeter separating the development from adjacent properties, shall be excluded from the computation of Common Land area unless the perimeter land contains land uses consistent with Section 5.3.11 and such uses are approved by the Planning Board.

5.3.8 Major Residential Development Considerations

In evaluating the proposed Major Residential Development, the Planning Board shall consider the general objectives of this By-Law and of Major Residential Development, including, but not limited to, the existing and probable future development of surrounding areas; the appropriateness of the proposed layout of the lots and the proposed layout and use of the Common Land in relation to the topography, soils and other characteristics and resources of the tract of land in question. The Planning Board shall grant a FDSP if it finds that the Flexible Development and the proposed uses:

- a) comply in all respects to the requirements of the Bylaw and enhance the purpose and intent of this bylaw.
- b) are in harmony with the existing and probable future uses of the area and with the character of the surrounding area and neighborhood,
- c) are, on balance, more beneficial to the Town than the development likely would be without such approval.
- d) comply with the requirements of Section 1.5.5 for granting special permits.
- e) will be connected to public sewer, unless in the opinion of the Board of Health, the development can be adequately served by the use of on-site subsurface sewage disposal systems and in furtherance of the purposes of this Zoning By-Law and protection of the environment.

5.3.9 Requirements for Major Residential Development

The Planning Board shall review the data required in Section 5.3.4 above, and shall hold a public hearing within 65 days of a complete filing as defined in Section 1.3.3.5 (Plan Acceptance) and comply with the procedures for special permits as required under G.L. c. 40A, § 9, and Section 1.5 of this By-Law. Prior to the close of the public hearing, the Board shall recommend the development plan that it considers the most beneficial to the Town. Within seven days, the Applicant shall then elect which plan he wishes to pursue and communicate this choice in writing to the Board, prior to the close of the public hearing. The Board may approve such plan with or without conditions. The Board may disapprove an application for Major Residential Development if it determines that: the plan the Applicant elects to pursue does not conform to the requirements of this By-Law; or, either the Conventional Development Plan or Flexible Development Plan presented by

the Applicant is not a good-faith effort to create a design that is consistent with the intent and purposes of Major Residential Development, as set forth in this By-Law.

5.3.10 Procedural Requirements

5.3.10.1 When a Major Residential Development Special Permit is approved for a Conventional Development Plan (CDSP) submitted in accordance with Section 5.3.4.b.1 above, all subsequent submissions, requirements and approvals will be specified in the Subdivision Rules, as applicable. No development of land within a Major Residential Development shall occur unless the land is in fact subdivided into lots with each dwelling having a separate lot described on an approved subdivision plan or on an approval not required plan.

5.3.10.2 When a Major Residential Development Special Permit is approved for a Flexible Development Plan (FDSP) submitted in accordance with Section 5.3.4.b.2-5, all subsequent submissions, requirements and approvals will be governed by the requirements of the Subdivision Rules. If Definitive Subdivision approval is required, the FDSP shall contain a condition that a Definitive Subdivision Plan complying with the Subdivision Rules be subsequently submitted to the Planning Board. Where applicable, the provisions of Flexible Development shall supersede any other provisions to the contrary of this By-Law or the Subdivision Rules. No development of land within a Flexible Development shall occur unless the land is in fact subdivided into lots with each dwelling having a separate lot described on an approved subdivision or approval not required plan.

5.3.10.3 The Planning Board may require changes to the "Flexible Development Plan" or Conventional Development Plan and impose additional conditions, safeguards, and limitations as it deems necessary to secure the objectives of the By-Law.

5.3.10.4 Revisions and Amendments of Flexible Development Plans and Conventional Development Plans" - Subsequent to granting of a FDSP or CDSP and approval of a Definitive Plan of subdivision, the Planning Board may permit without initiating a new Special Permit proceeding the relocation of lot lines within the development. Any change in the layout of streets; in the use, ownership and layout of the Common Land; or any other conditions stated in the original Special Permit, shall require written approval of the Planning Board. The Planning Board may, upon its determination, require a new Special Permit application if it determines that the proposed changes are substantial in nature or may be of public concern.

5.3.11 Use of the Common Land

The Common Land shall be dedicated and used for conservation, historic preservation and education, outdoor education, recreation, park purposes, agriculture, horticulture, forestry, or for a combination of those uses. No other uses shall be allowed in the Common Land except as provided herein:

5.3.11.a) The proposed use of the Common Land shall be specified on a Land Use Plan and appropriate dedications and restrictions in a form satisfactory to the Planning Board

shall be recorded in the Worcester District Registry of Deeds. The Planning Board shall have the authority to approve or disapprove particular uses proposed for the Common Land in order to enhance the specific purpose of Flexible Development.

5.3.11.b) The Common Land shall remain unbuilt upon, provided that an overall maximum of five (5) percent of such land may be subject to pavement and structures accessory to the dedicated use or uses of the Common Land, and provided that the Common Land may be subject to temporary easements for the construction, maintenance, and repair of roads, utilities serving the Flexible Development, and sewer or drainage facilities serving the Flexible Development or adjacent land.

5.3.11.c) The Common Land may be in one or more parcels and shall be reasonable in size for all proposed or allowed use(s) of such land. Common land shall also be configured and designed to meet the following criteria:

- in places where the proposed residential development is adjacent to existing recreation, conservation, open space or other similar types of land, the common land in the development shall be configured to allow and promote opportunity for inter-connections of such lands;
- access strips at least forty-feet (40') wide shall be provided to each parcel of common land from one or more streets in the development, and shall be contiguous across proposed rights-of-way;
- access strips shall be delineated in a manner satisfactory to the Planning Board, and should utilize features such as stone walls or distinct vegetation wherever possible and appropriate;
- each point of entry to the common land from a street shall be designated in a manner satisfactory to the Planning Board; signage may, where deemed appropriate, be used to identify such locations and describe the associated common land (including ownership, permitted activities, public/private access);
- where appropriate, trail markers shall also be installed to guide users of the common land on the site and to help avoid encroachment onto abutting private property;
- signage, trail markers, and other features used to identify and/or delineate common land shall be installed prior to the sale of lots within such development.

Based upon the circumstances of each individual application and site, the Planning Board may require additional criteria and/or may waive strict compliance with the requirements listed above if the Board determines such action will result in a development that better meets the intent and purposes of this By-Law.

5.3.11.d) A portion of the Common Land may also be used for the construction of retention and detention facilities and leaching areas, if associated with drainage or septic disposal systems serving the Flexible Development, and if such use, in the opinion of the Planning Board, enhances the specific purpose of Flexible Development to promote better overall site planning. Easements shall be no larger than reasonably necessary and the Planning Board shall require adequate assurances and covenants that such facilities shall be maintained by the lot owners within the Flexible Development.

5.3.11.e) A portion of the Common Land may also be used for ways serving as pedestrian walks and bicycle paths, if such a use, in the opinion of the Planning Board, enhances the general purpose of Flexible Development and enhances better site and community planning, and if the Planning Board finds that adequate assurances and covenants exist, to ensure proper maintenance of such facilities by the owner of the Common Land.

5.3.12 Ownership of the Common Land

The Common Land shall, at the owner's election, be:

5.3.12.a) Conveyed in whole or in part to the Town of Grafton and accepted by it for one of the uses specified in 5.3.11;

5.3.12.b) Conveyed to a nonprofit organization, the principal purpose of which is the conservation of open space and/or any of the purposes and uses to which the Common Land may be dedicated;

5.3.12.c) Conveyed to a corporation or trust to be owned jointly or in common by the owners of lots or dwelling units within the Flexible Development. If such a corporation or trust is utilized, ownership thereof shall run with the land and pass with conveyances of the lots or dwelling units in perpetuity. Maintenance of the Common Land and facilities shall be permanently guaranteed by such corporation or trust which shall provide for mandatory assessments for maintenance expenses to each lot or residential unit. Each such trust or corporation shall be deemed to have assented to allow the Town of Grafton to perform maintenance of the Common Land and facilities, if the trust or corporation fails to provide adequate maintenance, and shall grant the town an easement over Common Land to do so. In such a case, the Town of Grafton shall first provide fifteen days written notice to the trust or corporation as to the maintenance that is lacking, and, if the trust or corporation fails to complete said work, the Town may perform it. The owner of each lot or residential unit shall be deemed to have assented to the Town filing a lien against each lot or residential unit in the development for the full cost of such maintenance, which liens shall be released upon payment to the Town of same. Each individual deed, as well as the deed of trust or articles of incorporation, shall include provisions to carry these provisions into effect. Documents creating such trust or corporation shall be submitted to the Planning Board for approval and shall be recorded in the Registry of Deeds as a condition of the FDSP.

5.3.12.d) Retained by the owner or other entity for use or lease for one of the purposes specified in 5.3.11 provided that the owner conveys the development rights of that open space in the form of a conservation restriction prohibiting further development of the property.

If the Common Land or any portion thereof is not conveyed to the Town of Grafton, a perpetual conservation restriction conforming to the standards of the State Division of Conservation Services, approved by the Planning Board and enforceable by the Town of Grafton, shall be imposed on the use of such land, providing that the land be kept in its open or natural state and that the land shall not be built upon, developed or used except in accordance with the provisions of the FDSP. Such restrictions shall further provide for maintenance of the Common Land in a manner which will ensure its suitability for its function, appearance, cleanliness and proper maintenance.

The proposed ownership of all the Common Land shall be shown on the Land Use Plan for Flexible Development. At the time of its conveyance, the Common Land shall be free of all encumbrances except as permitted by the Planning Board, or other claims except as to easements, restrictions and encumbrances required by this By-Law.

5.3.13 Design Guidelines

In evaluating the layout of lots and Common Land, the following criteria will be considered by the Planning Board as indicating design appropriate to the natural landscape and meeting the purpose of Flexible Development.

5.3.13.a) Preserve and maintain existing fields, pastures, other land in agricultural use and sufficient buffer areas to minimize conflict between residential and agricultural use. For example, tucking house lots and driveways into wooded areas is recommended.

5.3.13.b) Maintain or create a buffer of natural vegetation of at least 100 feet in width adjacent to surface waters and wetlands.

5.3.13.c) Leave unblocked or uninterrupted scenic views and vistas, particularly as seen from public roads, special places as designated in the Town of Grafton Open Space and Recreation Plan, or scenic roads. For example, a 100 foot deep "no build buffer" is recommended to screen homes from the street (and vice versa)

5.3.13.d) Protect the habitat areas of species listed as endangered, threatened or of special concern by the Massachusetts Natural Heritage Program.

5.3.13.e) Preserve historic and prehistoric sites and their environs in so far as needed to protect the character of the site.

5.3.13.f) The elements of the Flexible Development Plan (buildings, circulation, Common Land, landscaping, etc.) are arranged favorably with and so as to protect valuable natural environments such as stream valleys, outstanding vegetation, water bodies or scenic views.

5.3.13.g) Protection of major street appearance and capacity by avoiding development fronting such streets while contributing to the overall aesthetic quality of the development.

5.3.13.h) Landscaping screens areas of low visual interest such as utility boxes, trash containers, and parking areas, and treats pedestrian systems and open space areas in a manner which contributes to their use and visual appearance.

5.3.13.i) Active recreational areas are suitably located and accessible to the residential units and adequate screening ensures privacy and quiet for neighboring residents. Where called for in the Town of Grafton Open Space and Recreation Plan and where warranted by the criteria established in that plan, and where feasible on a site, a large playing field is to be provided for recreational use.

5.3.13.j) The pedestrian circulation system is designed to assure that pedestrians can move safely and easily on the site and between properties and activities within the site and neighborhood.

5.3.13.k) The Common Land shall be reasonably contiguous, coherent and if the tract of land abuts adjacent Common Land or other permanently protected open space, the Common Land shall be connected with such adjacent Common Land and with such permanently protected open space.

5.3.13.l) Access to the Common Land shall be delineated by the use of design elements such as stone walls, woodland paths surfaced with bark mulch, etc.

5.3.13.m) Provisions for affordable housing, as defined by M. G. L. Chapter 40B, Sections 20 through 23 inclusive, comprising at least 10% of the total number of dwelling units in the project and interspersed throughout the development, and in a manner and through instruments satisfactory to the Planning Board.
(T.M. 10-17-94)

5.3.14 Ways, Interior Streets, and Utilities

The construction of all ways, interior streets and utilities shall be in accordance with the standards specified in the Subdivision Rules. The Planning Board is strongly encouraged to waive those sections of the Subdivision Rules in the interests of good design if it determines that adequate access will be provided to all lots in the development by ways that will be safe and convenient for travel. While each development proposal is unique the Planning Board is encouraged to waive standards for cartway width (5.2.2.1), curbing (4.2, 5.7.3), Right of Way (4.1.4.1), Dead End Streets (4.1.6), Sidewalks (4.1.4.3), Drainage (4.7.9.2), Common Driveway (4.12 and 5.14) and to use a 25 mile per hour Design Speed to establish engineering criteria for minimum grade (4.1.5.1), maximum grade (4.1.5.2), minimum tangent length between reverse curves (4.1.3.3) and maximum grade within 50 feet of an intersection (4.1.5.6). (T.M.5-13-91)

5.4 Incentive Provisions in Business, Office, & Industrial Districts

5.4.1 As part of special permits for developments in the NB, CB, OLI and I Districts the special permit granting authority may grant exceptions to intensity regulations contained in Section 3.2.3.2. Exceptions may be granted of up to fifteen (15) percent above or below any single dimensional intensity regulation in return for an applicant's written agreement to provide one or more of the features listed in Section 5.4.2.

5.4.2 One of the following features may be required by the Planning Board in exchange for allowing a single exception in intensity regulation dimensions as provided in Section 5.4.1.

5.4.2.a) Site landscaping beyond the minimal required by this By-Law.

5.4.2.b) Sidewalks along the street on the property for which the special permit is being considered.

5.4.2.c) Paved vehicle lanes for:

1. Turning movements on or off of a public roadway,
2. Postal boxes or other public conveniences,
3. Bus stops.

5.4.2.d) Structures or area to be used for the following public purposes:

1. Bus stop shelters
2. Information kiosks
3. Parking greater than that required in this bylaw

5.5 Wind Energy Conversion System

A wind energy conversion system may be built, provided that the height of any tower plus the radius of any rotor mounted on such tower does not exceed 70 feet above the ground level base of such tower, and that the distance from the ground level base of the tower to any property or street line be not less than the sum of the total of the height of the tower plus the radius of the rotor. The issuance of a special permit for a wind energy conversion system shall be subject to a finding by the Grafton Planning Board that the operation of such a system is not likely to cause electromagnetic disturbances for adjacent properties. The Grafton Planning Board shall require the testimony of a qualified expert witness to give such assurance and shall further require the applicant for such a special permit pay for the services of the qualified expert witness.

5.6 Riding Stables or Academies or Trails or Boarding Stables

Riding stables or academies or trails, or boarding stables for five or more horses or ponies may be built and operated provided that:

- Any such facility shall be located on a lot at least five (5) acres in area.

-
- All buildings and structures, including riding rings and manure pits, shall be located at least 100 feet from any property or street line.
 - The use of temporary buildings or trailers for the stabling of horses or ponies in excess of 15 days is prohibited.
 - There shall be no storage of supplies outside of permanent buildings.
 - All regulations on the stabling of horses or ponies made by state or local health authorities shall be complied with.
 - Where the holding of shows or competitions is intended, off-street parking shall be provided at a rate of one space for every five spectators. Such parking area need not be paved, but shall, at a minimum, be graveled or treated to reduce dust.

5.7 Adult Uses

5.7.1 Authority, Purpose and Intent

5.7.1.1 These provisions are enacted pursuant to General Laws, Chapter 40A, Section 9A, and pursuant to the Town's authority under the Home Rule Amendment to the Massachusetts Constitution. It is the purpose and intent of this By-Law to address and mitigate the secondary effects of the Adult Entertainment Enterprises and sexually oriented businesses referenced and defined herein. Such secondary effects have been shown to include increased crime, adverse impacts on public health, adverse impacts on the business climate of the Town, adverse impacts on the property values of residential and commercial properties, and adverse impacts on the quality of life in the Town, all of which secondary impacts are adverse to the health, safety and general welfare of the Town of Grafton and its inhabitants.

5.7.1.2 Further, these provisions have neither the purpose nor intent of imposing a limitation or restriction on the content of any communicative matter or materials, including sexually oriented matter or materials. Similarly, it is not the purpose or intent of this bylaw to restrict or deny access by adults to Adult Entertainment Enterprises or to sexually oriented matter or materials protected by the Constitutions of the United States of America and of the Commonwealth of Massachusetts, nor restrict or deny rights that distributors or exhibitors of such matter or materials may have to sell, rent, distribute, or exhibit such matter or materials. Neither is it the purpose or intent of this By-Law to legalize the sale, rental, distribution, or exhibition of obscene or other illegal matter or materials.

5.7.2 Rules and Application Requirements. No special permit will be granted by the Planning Board for an Adult Entertainment Enterprise unless the following conditions are satisfied:

5.7.2.a. The Planning Board shall be the Special Permit Granting Authority. The application requirements and procedures shall be conducted pursuant to Section 1, Administration and Interpretation of this Zoning By-Law.

5.7.2.b. Dimensional Requirements:

Any such proposed use shall be located:

1. a minimum of 200 feet from any residential district designated by the Grafton Zoning By-Law;
2. a minimum of 2000 feet from any public school, public library, day care facility or religious facility;
3. a minimum of 1000 feet from any public playground, park or recreational area where large numbers of minors regularly travel or congregate;
4. a minimum of 4000 feet from any other adult uses is required.

5.7.2.c. No special permit shall be issued to any person convicted of violating the provisions of General Laws, Chapter 119, Section 63 or General Laws, Chapter 272, Section 28.

5.7.2.d. No special permit shall be granted pursuant to this section unless the Board shall have made detailed findings, in addition to the findings required by Section 1.5.5 of this Zoning By-Law, based upon the required submissions in the following subsections e. and f., and of Section 1 of this By-Law, that:

1. the specific site is an appropriate location for such use in accordance with the standards set forth in the foregoing subsection b;
2. the use as developed and carried on will not adversely affect the neighboring properties or people;
3. the use as developed and carried on will not create a nuisance or serious hazard to vehicles or pedestrians traveling into, out of, and about the premises;
4. the use as developed shall provide adequate and appropriate facilities for its proper operation, taking into account the public health and welfare of its patrons and the surrounding environs of the property.

5.7.2.e. In addition to the submittal requirements and review standards pertaining to administration, application and submission requirements, fees, powers, hearings and time limits, provided in Section 1 of this By-Law, each applicant for a special permit under this section shall submit:

1. a security plan detailing how the property will be policed so as to avoid unruly and/or illegal activities from taking place upon the applicant's property and to

deter and prevent incidents of vandalism, loitering and other associated activities upon its property;

2. a plan to protect adjacent or neighboring properties against noise, glare, unsightliness or other objectionable features;
3. evidence that adequate stormwater and drainage facilities are available or will be provided to service the use; this information shall be contained in the site plan submitted under Section 1 of this By-Law. The site plans shall also demonstrate the adequacy of water supply and sewerage disposal facilities to service the site and the proposed use;
4. evidence that the adult entertainment establishment will not generate excessive noise so as to create a disturbance and nuisance to adjacent or other neighboring properties;

5.7.2.f. Every adult entertainment establishment lawfully in existence as of the date of adoption of this section shall apply for a special permit as a condition of its continued operation at such location, within ninety days of the effective date of adoption of this section provided, however, that any adult entertainment establishment lawfully in operation and holding all required licenses as of the date of adoption of this section shall be grandfathered as to its location and considered a nonconforming use with respect thereto and provided, further, that any of the particular requirements contained in subsections d, e and h of this section may be waived by a four-fifths vote of the Planning Board upon a finding that the literal enforcement of the particular requirements of these subsections upon such existing adult entertainment enterprise would result in an extreme hardship.

5.7.2.g. No pictures, publications, videotapes, movies, covers or other implements, items, or advertising that fall within the definition of adult entertainment enterprise merchandise or are erotic, prurient, or related to sadism, or sexual exploitation shall be displayed in the windows of, or on the building of any adult entertainment enterprise, or be visible to the public from pedestrian sidewalks or walkways or from other areas, public or semi-public, outside such establishments.

5.7.2.h. All other applicable provisions of the Grafton Zoning By-Law shall also apply.

5.7.2.i. If any section or portion of this By-Law is ruled invalid by a court of competent jurisdiction, such ruling will not affect the validity of the remainder of this By-Law.

5.8 Wireless Communications Facilities

5.8.1 Purpose and Intent, Definitions

5.8.1.1 Purpose and Intent

The Town recognizes the quasi-public nature of wireless communications systems and finds that these regulations are necessary to protect public safety, to protect the ecological, scenic, historical and recreational values of the Town and to ensure that adverse visual and operational effects will not contribute to blighting, deterioration or other deleterious effects upon the surrounding neighborhood.

It is the intent of this Section to provide for establishment and/or expansion of cellular telephone, mobile radio and personal communication and similar systems within the Town of Grafton while protecting neighborhoods and minimizing the adverse visual and operational effects of wireless telecommunications facilities through careful design, siting and screening and in furtherance of the requirements of the Telecommunications Act of 1996. More specifically the Section has been developed in order to:

- Maximize use of existing and approved towers and other structures to accommodate new antennas and transmitters in order to reduce the number of wireless communications facilities needed to serve the community.
- Encourage providers to co-locate their facilities on a single structure or site
- Minimize the location of facilities in visually sensitive areas
- Site facilities below visually prominent ridge lines
- Protect historic and residential areas from potential adverse impacts of such facilities
- Avoid potential damage to adjacent properties from facility failure through engineering and careful siting of facilities

5.8.1.2 Definitions

A “wireless communications facility” shall mean transmitters, structures (including but not limited to towers) and other types of installations, including but not limited to antennae and accessory structures, used for the provision of wireless services, including but not limited to all commercial mobile services.

5.8.2 This Section shall not apply to “direct-to-home satellite services” or other similar antenna(e) which are no greater than six feet (6’) in diameter.

5.8.3 Site Selection Preferences

These regulations are written for the purpose of indicating that the Town of Grafton's preferences for facility locations are as follows, in descending order of preference:

- On existing structures such as buildings, communications towers, smokestacks, utility structures, etc.;
- In locations where existing topography, vegetation, buildings or other structures provide the greatest amount of screening;
- On new towers in the CB, OLI and I zoning districts;
- On government or educational institution structures in the CB, OLI and I zoning districts;
- On government or educational institution structures in the A or R40 zoning districts;
- On government or educational institution structures in the R20, RMF or NB zoning districts;
- On new towers in the A and R40 zoning districts;
- On new towers in the R20, RMF and NB zoning districts.

Collocation is generally viewed as preferable to construction of a new support structure where it is assumed that collocation may often be less imposing. The Board's evaluation of each application is essential, however, and applicants are reminded that the preferences described in this section are intended as guidance for development of the application and for the Board's review but are not to be considered in any way completely dispositive.

5.8.4 Additional Submittal Requirements

In addition to the submittal requirements of Section 1.3 of this Zoning By-Law, the following items and information are required to be submitted at the time an application under this section is filed:

5.8.4.a) A report by a professional or radio frequency engineer describing the general design and capacity of any proposed installation, including:

- The number and type of antenna(e) proposed;
- A description of the proposed antenna(e) and all related fixtures, structures, appurtenances and apparatus, including height, materials, color and lighting;
- A description of the proposed antenna(e) function and purpose;
- The frequency, modulation and class or service;
- Direction of maximum lobes;

-
- An evaluation of the potential to utilize existing facilities for the proposed facility
 - An evaluation of the feasibility of attaching the proposed facility to existing buildings;
 - Copies of all applicable permits, including but not limited to all State and Federal permits required for this project and a certification of compliance with the terms and provisions of the license issued for this purpose by the Federal Communications Commission (FCC).

5.8.4.b) Site Justification or Appropriateness Statement, including a description of the narrowing process that eliminated other potential sites;

5.8.4.c) Evidence that the applicant has filed a notice of proposed construction with the Federal Aviation Administration if the proposed facility exceeds 200 feet in height or in the event such notice is otherwise required.

5.8.4.d) Support materials that show: the location of structures of similar or greater elevation within one-half-mile (two thousand six hundred forty feet) radius of the proposed site/parcel; that the owners of those locations have been contacted and asked for permission to install the facility on those structures, and denied, or that such other locations do not satisfy requirements to provide the service needed. This would include, but not be limited to, smoke stacks, water towers, tall buildings, antenna or towers of other wireless communications companies, other wireless communications facilities (fire, police, etc.) and all other tall structures. Failure to present evidence of a good faith effort on the part of the applicant to utilize existing facilities shall be grounds for denial of the application.

5.8.4.e) Material describing a specific plan for a “balloon” or similar test, including the date and time, as well as a rain date and time, suitably and clearly described for inclusion in the legal notice in the newspaper and for inclusion in the notice to abutters.

5.8.4.f) A statement indicating how the proposal meets, in the opinion of the applicant, the intents and purposes identified in subsection 1 of this section.

5.8.4.g) Stamped, addressed envelopes to all abutting property owners (according to the latest available tax listing) within a one-thousand three hundred twenty foot (1,320’) radius of the proposed facility location, in addition to other special permit notice requirements, to facilitate the Board’s notification of the public hearing to those additional property owners.

5.8.4.h) Due to the technical nature of the materials to be submitted, and the discussion and testimony presented during the public hearing for wireless communications facility applications, the applicant shall submit to the Planning Board, at the time of application, funds in an amount sufficient for the Board to engage the services of experts or consultants to assist the Board in its deliberations, and a recording secretary, stenographer, or similar service, to keep a detailed record

of the proceedings during the public hearing for such application. Said funds shall be deposited by the Town in a revolving account, established pursuant to General Laws, Chapter 44, Section 53E½, to be used solely for the purposes of this Section. Funds remaining after the close of the public hearing shall be returned to the applicant.

5.8.5 Conditions for Granting

In addition to the conditions for granting contained in Section 1.5.5 and all other applicable sections of this bylaw, the Planning Board shall make findings on which to base its determination on the specific issues of:

5.8.5.a) how well the use and proposal meet all required conditions and specifications of the By-Law;

5.8.5.b) if the proposed facility is to be located in a residential zoning district, or within a distance equal to twice the height of the tower (from the ground to its highest point) but not less than 200 feet of a residential zoning district, whether the applicant has provided substantial evidence that the facility cannot, by technical necessity, feasibly be located in a non-residential zone

5.8.5.c) whether the proposal would sufficiently screen the facility from view, both through landscaping, placement and design, in order to minimize the visual appearance of the entire facility from areas within a one-thousand three hundred twenty foot (1,320') radius of the proposed facility location.

5.8.5.d) whether the proposed facility will be housed within or upon a special structure, which will be architecturally compatible with the surrounding residential area (including, for example, bell tower or church steeple), or whether, by virtue of its design, no such special structure is required in order to minimize the visual impact within a one-quarter-mile (1,320') radius. This provision applies to facilities in a residential (A, R40, R20, or RMF) zoning district, or within a distance equal to twice the height of the facility (from the ground to its highest point) but not less than three hundred feet (300'), from such zoning district.

5.8.6 General Requirements

5.8.6.1 Any principal part of the facility (excluding guy cables) shall be setback from the nearest property line by a distance of twice the height of the facility (as measured to its highest point, including antennae, etc.), or a distance of three hundred feet (300'), whichever is greater.

5.8.6.2 Any principal part of the facility (excluding guy cables) shall be setback from the nearest residential structure by a distance of twice the height of the facility (as measured to its highest point, including antennae, etc.), or a distance of three hundred feet (300'), whichever is greater.

5.8.6.3 No artificial lighting shall be installed unless required by the Federal Aviation Administration. If such lighting is required, it shall be screened so as not to project its light below the horizontal plane in which it is located.

5.8.6.4 A tower shall be of monopole or similarly unimposing design. In the event other than a monopole is proposed, the Board will view a guyed pole more favorably than a broad lattice type or similar structure. The applicant shall successfully demonstrate to the satisfaction of the Board that the proposed facility will have minimal visual impact.

5.8.6.5 To minimize the number of wireless communications facility sites in the community in the future, the proposed facility shall be designed and constructed so it is reasonably capable of accommodating other users, including other wireless communication companies and local police, fire and ambulance companies, unless it is determined to be technically infeasible based on the Board's evaluation of information submitted.

5.8.6.6 No interference to existing television, cable television or radio signals, including emergency systems and public safety communications, shall be permitted from the tower or components thereon. If interference occurs, it shall be the responsibility of the site owner to immediately remedy it.

5.8.6.7 Unless otherwise required by the Federal Communications Commission or the Federal Aviation Administration, towers facilities shall be painted non-contrasting grey or blue in color, or camouflaged with some other treatment deemed acceptable by the Board. Antenna(e) shall be non-contrasting or camouflaged.

5.8.6.8 The related unmanned equipment and/or other buildings shall not be more than twelve (12) feet in height. All ancillary uses (including, for example, but not limited to, a maintenance depot, vehicle storage, etc.) are prohibited.

5.8.6.9 All utilities proposed to serve the facility shall be installed underground.

5.8.6.10 Dish antennae shall be no more than six (6) feet in diameter, and shall be mesh (rather than solid). Panel antennae shall be no more than five (5) feet in height.

5.8.6.11 No advertising or signage shall be permitted on the facility.

5.8.6.12 No facility shall be located within a distance equal to twice the height of the facility (as measured from the ground to its highest point) plus four hundred feet (400') of a wellhead area of a municipal water supply.

5.8.6.13 Landscaping shall be provided around the base of the facility, adjacent to a security fence at least six feet (6') in height. The landscaping shall consist of a planting strip at least 25 feet wide, with ground cover and/or grass, and shall include at least one row of six-foot (6') high evergreen trees adjacent or proximate to the fence, and a row of deciduous trees at least ten feet (10') in height and at least one-and-one-half-inch (1 1/2") caliper planted no more than 20 feet apart on center, and

deemed acceptable by the Board. Applicants may substitute alternative landscape plans that meet the purposes of this subsection to limit the visual impact of the lower portion of the tower and adjoining accessory facilities for the Board's consideration.

5.8.7 Although not an accessory use as defined by the By-Law, a wireless communications facility may be sited on a lot which already accommodates a lawful principle use. During the Board's review of the special permit application, due consideration will be given to the overall functioning of the lot, with particular respect to the items in Sections 1.5.5 and 5.8.5 and other applicable sections of this By-Law.

5.8.8 Any alteration or expansion of the facility or structure or the uses it supports (including the size, number or color of antennae or other components) shall require a modified special permit, applied for in accordance with all regulations applicable at the time such application is properly made.

5.8.9 If the facility is abandoned or no longer operable, it shall be removed within six (6) months of its abandonment.

5.8.10 The Planning Board may, by a vote of at least 4 members, each of whom is eligible to participate in the special permit vote, authorize deviation from strict compliance with the provisions of this Section 5.8 where such deviation is in furtherance of the purposes and intents of the bylaw, and where such authorized deviation is expressly enumerated, justified and acted upon by the Planning Board.

5.8.11 Severability: The invalidity of any section or provision of this By-Law shall not invalidate any other section or provision herein.

Section 5.9 Common Driveway

The purpose of this Section is to promote and ensure vehicular access to building sites that: provides a safe and efficient means of ingress/egress; minimizes disturbance to, and encourages the protection and preservation of, areas with significant environmental and/or historical features and vistas; and, enhances public safety by minimizing to the extent practical the number of points of ingress and egress along roadways.

5.9.1 Procedure

Common driveways shall only be allowed upon the issuance of a Special Permit by the Planning Board in accordance with all applicable provisions of this By-law and shall be designed to conform to the requirements set forth in the Rules and Regulations Governing the Subdivision of Land, Grafton, Massachusetts, in effect at the time such application for a common driveway is submitted. Applications for a Special Permit for common driveways shall also demonstrate access to the proposed building site of each lot to be served by the common driveway over the legal frontage of one of such lots, depicting all necessary grading, materials and construction methods. Under no circumstances shall more than three lots be serviced by a common driveway.

The Planning Board may, by a vote of at least four (4) members, each of whom is eligible to participate in the special permit vote, authorize deviation from strict compliance with the provisions of this Section where such deviation is in furtherance of the purposes and intent of the By-Law provided such deviation is not, in the opinion of the Board, contradictory or inconsistent with the intent and purposes set forth in Sections 1.2 and 5.9 of this By-law. The Planning Board, in its decision, shall make specific findings justifying the granting or denying of any such requests.

5.9.2 Conditions for Granting

In addition to the criteria contained in Section 1.5.5 and all other applicable sections of this By-law, the Planning Board shall, in considering an application under this Section, make findings on which to base its determination with regard to the following:

- (a) compliance with the design and construction requirements for common driveways set forth in the Rules and Regulations Governing the Subdivision of Land, Grafton, Massachusetts;
- (b) access to the proposed building site of each lot using the legal frontage of said lots;
- (c) provisions for safe ingress/egress of the residents of the lots served by the proposed common driveway, as well as public safety vehicles and personnel;
- (d) the location of the point of ingress/egress of the proposed common driveway with respect to public safety, convenience and traffic flow, including, but not limited to, topography, sight lines and road grades;
- (e) location of environmental and/or historical resources, and the impacts of driveway construction on such resources without the use of a common driveway;
- (f) the potential for the proposed common driveway to reduce excessive points of ingress/egress along roadways and minimize access points to the extent practical.

In granting any Special Permit under this Section, the Planning Board may impose such conditions, safeguards, limitations and restrictions as it deems appropriate, and which are not inconsistent with the purpose or provisions of this By-Law, wherever in the Board's determination such requirements are warranted and in the public interest. All Special Permits issued under this Section shall be in accordance with the provisions of Chapter 40A of the General Laws, as well as all applicable requirements of this By-Law.

[This page intentionally left BLANK]